

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RON WATERMAN,

Petitioner,

V.

KAREN BRUNSON,

Respondent.

No. C08-375MJP

ORDER DENYING MOTION FOR
CERTIFICATE OF
APPEALABILITY

This matter comes before the Court on Petitioner Waterman's notice of appeal, which the clerk has construed as a request for a certificate of appealability. (See Dkt. No. 11.)

In a March 2008 Report and Recommendation, Magistrate Judge Theiler's recommended that the Court deny Petitioner's habeas petition without prejudice because Petitioner has not exhausted his state court remedies. On June 6, the Court agreed with the recommendation and denied the petition without prejudice. (Dkt. No. 9.) Mr. Waterman now seeks to appeal the Court's denial of the petition.

A habeas petitioner can appeal the denial of a 28 U.S.C. § 2254 petition only after obtaining a “certificate of appealability” from a federal circuit or district court. 28 U.S.C. § 2253(c); United States v. Asrar, 116 F.3d 1268, 1269-70 (9th Cir. 1997). The statute provides that the Court may only issue a certificate of appealability “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c). As the Supreme Court has explained, this means that the petitioner “must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). A

1 petitioner must show that “reasonable jurists could debate whether … the petition should have been
2 resolved in a different manner or that the issues presented were adequate to deserve encouragement
3 to proceed further.” Id. The Court’s focus is “the debatability of the underlying constitutional claim,
4 not the resolution of that debate.” Miller-El v. Cockrell, 537 U.S. 322, 342 (2003). A claim is
5 debatable “even though every jurist of reason might agree, after the [certificate] has been granted
6 and the case received full consideration, that petitioner will not prevail.” Id. at 338.

7 Mr. Waterman has not made a substantial showing of the denial of a constitutional right.
8 And the Court does not believe that reasonable jurists would find the Court’s assessment of the
9 claims debatable or wrong. The motion for a certificate of appealability is therefore DENIED.

10 The Clerk is directed to send copies of this order to Mr. Waterman.

11 Dated this 20th day of August, 2008.

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14 Marsha J. Pechman
United States District Judge
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